

R I D E D

JUL 11 1977

MICHAEL BOBAK, JR., CLERK

IN THE  
**SUPREME COURT OF THE UNITED STATES**

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**October Term, 1976**

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**No. 76-1520**

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**ROBERT HENRY and HELEN HENRY, *h/w***  
*Petitioner*

**v.**

**UNITED OVERSEAS MARINE CORPORATION,**  
*Respondent*

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**RESPONSE OF RESPONDENT  
TO PETITION FOR WRIT  
OF CERTIORARI**

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**ROBERT B. WHITE, JR.**  
*Counsel for Respondent*

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**ARGUMENT****The Petition Should Be Granted.**

The essence of the Petition for a Writ of Certiorari in this case is that the Third Circuit Court of Appeals "has decided an important question of Federal law which has not been, but should be, settled by this court." The quoted language, of course, is from Rule 19(b) of the Rules of this Honorable Court. While there is disagreement between petitioner and respondent on the merits of the decision reached by the Third Circuit Court of Appeals, there is no disagreement that the issues involved raise important questions of admiralty and maritime law which should be settled by this Court.

The issues involved here require construction of the 1972 amendment to 33 U.S.C. §905 which was the addition of subsection (b). Section 905(b) is recited at page 4 of the Petition. The interpretation required by this Honorable Court involves the standard of care Congress intended to impose on ship-owners *vis a vis* longshoremen working aboard their vessels.

Recently, in *Northeast Marine Terminal Co., Inc. v. Caputo*, 45 U.S.L.W. 4729 (June 14, 1977), this Court began the task of construing those provisions of the 1972 Amendments to the Longshoremen's and Harbor Workers' Compensation Act that have generated controversy in the inferior federal courts. In *Caputo*, this Court construed 33 U.S.C. §902(3). Respondent submits that the instant case presents an excellent vehicle for this Court to continue the task begun in *Caputo*. Should the Court grant the Petition for Certiorari and settle the standard of care issued under 33 U.S.C. §905(b), the substantial controversial questions raised by the 1972 Amendments will be resolved.

At this juncture, almost five years after the effective date of the 1972 Amendments, there have been numerous decisions interpreting 33 U.S.C. §905(b). Accordingly, this Court has the benefit of the exhaustive analyses of these inferior federal courts. To deny the petition herein will leave the standard of

care issue unsettled to the detriment of both longshoring and shipping interests. Conversely, no advantage will be gained by this Court deferring a decision on the standard of care issue.

### **CONCLUSION**

For the reasons stated herein, it is respectfully requested that the Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit be granted.

Respectfully submitted,

**Robert B. White, Jr.**

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